



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00808

COUNSEL: [REDACTED]

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His narrative reason for separation of "Misconduct" be changed to something more favorable.

APPLICANT'S CONTENTIONS

He would like his narrative reason for separation changed from misconduct to something more favorable. His "misconduct" was a result of severe mental health issues, which he is now in recovery from. He was seen at the mental health clinic for several years, with little support or help. He received continual disciplinary actions and hazing from fellow airmen, which only exacerbated his condition. He has since received proper help and education, which has allowed him to recover significantly. It has taken this many years for him to clearly understand the nature of his issues and how to take action for his betterment. His issues were severe and exacerbated by service and the lack of knowledge about them by the medical practitioners.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force senior airman (E-4).

On 13 Sep 95, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.49 for minor disciplinary infractions. The specific reasons for the action were:

- a. On 20 Sep 94, a Letter of Reprimand (LOR) was issued for using his government travel card to make unauthorized purchases from a drug store and cycle center, totaling \$39.92 on or about 7 Aug 94.
- b. On 13 Oct 94, a LOR was issued for failing to go at the time prescribed to his appointed place of duty on or about 18 Sep 94.

AFBCMR Docket Number BC-2023-00808

Work-Product

Work-Product

- c. On 25 May 95, a LOR was issued, as an investigation had disclosed, he knowingly wrote 10 worthless checks, including 5 to the base exchange, 2 to burger king, and 1 to H&R Block, totaling \$187.24, between on or about 21 Apr 95 and on or about 18 May 95.
- d. On 25 May 95, a LOR was issued for failing to follow appropriate technical data while performing critical maintenance to an aircraft, which could have resulted in the loss of an aircraft and the crew, on or about 17 May 95.
- e. On 7 Jul 95, a LOR was issued, as an investigation had disclosed, he wrote five worthless checks to local downtown businesses, totaling \$74.47 between on or about 20 Apr 95 and on or about 6 May 95.
- f. On 10 Aug 95, an AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received Nonjudicial Punishment (NJP), Article 15 for failing to go at the time prescribed to his appointed place of duty. He received a reduction to airman first class, suspended until 9 Feb 96 and 30-days extra duty.

On 20 Sep 95, the Staff Judge Advocate found the discharge action legally sufficient.

On 22 Sep 95, the discharge authority directed the applicant be discharged for minor disciplinary infractions, with a general (under honorable conditions) service characterization. Probation and rehabilitation were considered, but not offered.

On 26 Sep 95, the DD Form 214, *Certificate of Release or Discharge from Active Duty*, indicates the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "Misconduct" and he was credited with 5 years, 3 months, and 15 days of total active service.

On 4 Oct 96, the applicant submitted a request to the Air Force Discharge Review Board (AFDRB) for an upgrade to his discharge.

On 10 Sep 98, the AFDRB concluded the discharge characterization was improper. The Board noted the applicant had over six years of total service at the time the discharge was initiated; however, the notification failed to inform him of his right to an administrative discharge board. This constituted a failure to provide full due process, therefore the Board considered this an impropriety and upgraded the discharge characterization to "honorable" and the reentry (RE) code was changed to "2C." The remaining aspects of the discharge were not changed.

On 30 Oct 98, the DD Form 214 was corrected to reflect that, on 26 Sep 95, he was honorably discharged with a reentry (RE) code of "2C".

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit E.

POST-SERVICE INFORMATION

On 17 Jun 24, the Board sent the applicant a request for post-service information and advised the applicant he was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not he had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit C). The applicant replied on 27 Jun 24 and provided an FBI report. According to the report, the applicant has had no arrests since discharge. The applicant also provided a personal statement and character letters.

The applicant's complete response is at Exhibit D.

APPLICABLE AUTHORITY/GUIDANCE

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming Post Traumatic Stress Disorder (PTSD). In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

- a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- b. Did that condition exist/experience occur during military service?
- c. Does that condition or experience actually excuse or mitigate the discharge?
- d. Does that condition or experience outweigh the discharge?

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness issued supplemental guidance, known as the Wilkie Memo, to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to paragraphs 6 and 7 of the Wilkie Memo.

On 17 Jun 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for the desired change to his records from a mental health perspective. A review of the available records finds, although his full-service treatment records are not available for review, there is evidence he did receive mental disorder diagnoses during service. He was referred to the Physical Evaluation Board (PEB) for his mental health conditions of attention deficit-hyperactivity disorder (ADHD), predominately inattentive type, with a marked degree of impairment and moderate degree of social/industrial adaptability on axis I and personality disorder not otherwise specified (NOS) with anti-social, obsessive/compulsive, narcissistic, and borderline personality traits, severe, on axis II. Both conditions existed prior to service (EPTS) and were permanently aggravated by his service according to the medical board report. Clear explanations for how his EPTS conditions were permanently aggravated by his military service were not provided. The results of the PEB were not included in his existing military records, but most likely he would have been found not unfitting because these conditions are categorized as unsuiting and not mental health unfitting conditions for continued military service. Unsuiting conditions do not meet the criteria for a medical discharge but rather for an administrative discharge. From his available records, there is no indication he met the requirements of a medical discharge and there is no evidence he had any unfitting mental health conditions to qualify for a medical discharge. Since there is evidence he had unsuiting mental health conditions of ADHD and personality disorder NOS during service, these conditions may explain and cause his acts of misconduct but do not excuse or mitigate his misconduct and discharge. His ADHD may have possibly caused his misconduct of dereliction of duty by failing to follow appropriate technical data while performing critical maintenance to an aircraft and failing to go to his appointed place of duty on two occasions because of inattention and poor concentration issues, but his remaining misconduct of issuing several checks with insufficient funds on numerous occasions and misusing his government travel card appeared to have been caused by his personality disorder, especially since he was identified

to have anti-social personality traits. He had other personality traits too such as obsessive/compulsive, narcissistic, and borderline but anti-social traits and features according to the current Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) which involve a pervasive pattern of disregard for and violation of the right of others, failure to conform to social norms with respect to lawful behaviors, not respecting authority, being reckless and impulsive, and consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations. This particular trait in addition to his other personality traits may have caused his financially irresponsible behaviors. Despite his personality disorder being a contributing factor to his behaviors and misconduct, there is no evidence the applicant did not know right from wrong and not being able to adhere to the right and refrain from the wrong. In fact, his notification memorandum stated an investigation revealed he knowingly issued 10 worthless checks which demonstrated he was aware of his behaviors and his behaviors were intentional. It is acknowledged he did provide a response to his referral enlisted performance report (EPR) on 15 May 92, stating he believed his current problems of memory loss and short recall led to his insufficient performance and was receiving treatment to rectify these problems. He did not identify the cause of his memory problems and there is no evidence or records he had sustained a head injury which may cause these cognitive issues during service. After receiving this referral EPR, his work performance improved, resulting in him receiving an increased rating for the subsequent two EPRs. He received another referral EPR for his last EPR in service, but no evidence this referral EPR was caused by his memory or cognitive issues. He received a referral EPR because he failed to meet personal and Air Force financial standards. The applicant contended he had borderline personality disorder (BPD) and PTSD on his applications to the AFBCMR. There is no evidence he had any of these conditions during service. He was assessed to have traits of BPD but did not meet the full diagnostic criteria for this condition to be given a confirmed diagnosis. He was not given a diagnosis of BPD during service. There is no evidence he had PTSD or was diagnosed with PTSD during service. His treatment records from the Department of Veterans Affairs (DVA) reported his traumatic events were abuses he endured from family members during his childhood. There is no evidence or records he had any traumatic experiences during or from his military service. There is no evidence his military service aggravated his prior service traumatic experiences or condition. His trauma symptoms most likely began and developed after his military service, as delayed onset or expression of PTSD or trauma symptoms are not uncommon occurrences. The applicant was not discharged from service for having an unsuiting mental health condition, but for a pattern of misconduct. He claimed he received continual disciplinary actions and was hazed by fellow airmen. He did receive disciplinary actions via several LORs, and an Article 15 for his repeated misconduct, but this is standard operating procedure to help him repair his behaviors. His emotional distress was exacerbated by the consequences of his own misconduct. There is no evidence he was hazed by his fellow airmen as claimed. The AFDRB had upgraded his character of service to honorable because he was not advised of his right to an administrative discharge board when he was notified of discharge action. The Board considered this an impropriety with his discharge process and not because of his mental health condition. The AFDRB did consider his entire service and elected not to change his narrative reason for separation because the AFDRB did not condone the misconduct he committed. The Psychological Advisor concurs with the AFDRB's opinion. To reiterate, his unsuiting mental health condition may have been a contributing factor to his

misconduct but does not excuse or mitigate his misconduct and discharge for reasons already discussed. His misconduct problems caused his discharge and some of his misconducts were intentional. Therefore, the Psychological Advisor finds no error or injustice with his reason for separation/discharge from a mental health perspective and his request to change his narrative reason for separation based on his mental health condition is not supported.

LIBERAL CONSIDERATION: Liberal consideration is applied to the applicant's request due to the contention of having a mental health condition. It is reminded, liberal consideration does not mandate an upgrade or change to the record per policy guidance. The following are responses to the four questions in the Kurta Memorandum from the available and submitted records for review:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

The applicant contended his misconduct was caused by BPD and he tried to correct his behaviors because of his lack of insight. He also marked "PTSD" on a different application to the AFBCMR and provided no additional information about this condition. He contended his misconduct was the result of his severe mental health issues.

2. Did the condition exist or experience occur during military service?

There is evidence the applicant was diagnosed with and referred to the PEB for ADHD, predominately inattentive type, with a marked degree of impairment and moderate degree of social/industrial adaptability on axis I and personality disorder NOS with anti-social, obsessive/compulsive, narcissistic, and borderline personality traits, severe, on axis II. Both conditions were assessed to be EPTS and permanently aggravated by his service according to the medical board report. There is no evidence he was diagnosed with BPD or PTSD during service. He had traits of BPD but did not meet the full diagnostic criteria for this condition. His PTSD or trauma was developed from his childhood abuse experiences per his DVA treatment records and there is no evidence he experienced any traumatic events from his military service or duties.

3. Does the condition or experience actually excuse or mitigate the discharge?

The applicant's mental health conditions of ADHD and personality disorder NOS are unsuited mental health conditions for military service. There is evidence these unsuited mental health conditions may have caused and could explain his behaviors and misconduct, but they do not excuse or mitigate his misconduct and discharge.

4. Does the condition or experience outweigh the discharge?

Since his unsuited mental health conditions do not excuse or mitigate his discharge, they also do not outweigh his discharge to support his request to change his narrative reason for separation. His misconduct problems caused his discharge, and some of his acts of misconduct were intentional. There is no error or injustice identified with his discharge and reason for separation from a mental health perspective.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 22 Nov 24 for comment (Exhibit F) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed but the untimeliness is waived because it is in the interest of justice to do so. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. Section 1552(b).
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition. There is evidence the applicant was diagnosed with ADHD and personality disorder NOS; however, there is no evidence he was diagnosed with BPD or PTSD during service. The applicant had traits of BPD, but did not meet the full diagnostic criteria for this condition. ADHD and personality disorder are unsuiting conditions for continued military service, and they may explain his behaviors and misconduct, but they do not excuse or mitigate the misconduct and discharge. The unsuiting mental health conditions do not outweigh the basis for discharge nor support an upgrade of the narrative reason for separation. In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, the Board finds no basis to do so. While the applicant has presented some supporting statements indicating he has apparently made a successful post-service transition, the Board does not find the documentation sufficient to conclude they should upgrade the applicant's discharge at this time. In this respect, the supporting statements from the applicant's church colleagues indicate their admiration for the applicant and his impact on the church. However, these statements do not provide his greater impact in the community and if the impact is so admirable the Board could conclude an upgrade of his discharge would not constitute an injustice to those who have earned this characterization of service. Therefore, the Board recommends against correcting the applicant's records. The applicant retains the right to request reconsideration of this decision, which could be in the form of a personal statement, character statements, and/or testimonials from community leaders/members specifically describing how his efforts in the community have impacted others. Should the applicant provide documentation pertaining to his post-service accomplishments and activities, this Board would be willing to review the materials for possible reconsideration of his request based on fundamental fairness.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-00808 in Executive Session on 19 Mar 25:

[REDACTED], Panel Chair

[REDACTED], Panel Member

[REDACTED], Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 15 May 24.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 17 Jun 24.

Exhibit D: Applicant's Response, dated 27 Jun 24.

Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 21 Nov 24.

Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Nov 24.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

